

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 BENETH A. BROWNE
Deputy Attorney General
4 State Bar No. 202679
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6501
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against,

13 **PHILLIP CHUNG PIL PAIK, M.D.**
14 **11660 Scripps Lake Drive**
San Diego, CA 92131-2364

15 **Physician's and Surgeon's Certificate No.**
16 **A 50381,**

17 Respondent.

Case No. 800-2016-027508

DEFAULT DECISION
AND ORDER

[Gov. Code, § 11520]

18
19 **FINDINGS OF FACT**

- 20 1. On or about June 30, 2107, Complainant Kimberly Kirchmeyer, in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs, filed Accusation and Petition to Revoke Probation No. 800-2016-027508 against
23 PHILLIP CHUNG PIL PAIK, M.D. (Respondent) before the Medical Board of California.
24
25 2. On or about January 28, 1992, the Medical Board of California (Board) issued
26 Physician's and Surgeon's Certificate No. A 50381 to Respondent. The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges brought herein and will
28 expire on January 31, 2018, unless renewed.

1 3. On June 30, 2017, Robyn Fitzwater, an employee of the Board, served by Certified
2 Mail a copy of the Accusation and Petition to Revoke Probation in case number 800-2016-
3 027508 to Respondent's address of record with the Board, which was and is 11660 Scripps Lake
4 Drive, San Diego, California 92131. A copy of the Accusation and Petition to Revoke Probation,
5 the related documents, and Declaration of Service are attached as exhibit A, and are incorporated
6 herein by reference.

7 4. Service of the Accusation and Petition to Revoke Probation was effective as a matter
8 of law under the provisions of Government Code section 11505, subdivision (c).

9 5. On or about July 3, 2017, the aforementioned documents were returned by the U.S.
10 Postal Service marked "Unclaimed." A copy of the envelope returned by the post office is
11 attached as exhibit B, and is incorporated herein by reference.

12 6. Government Code section 11506 states, in pertinent part:

13 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
14 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
15 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
16 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation and Petition to Revoke Probation, and therefore waived his right to a hearing on
19 the merits of Accusation and Petition to Revoke Probation No. 800-2016-027508.

20 8. California Government Code section 11520 states, in pertinent part:

21 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
22 agency may take action based upon the respondent's express admissions or upon other evidence
23 and affidavits may be used as evidence without any notice to respondent."

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on
26 Respondent's express admissions by way of default and the evidence before it, contained in
27 exhibits A, B, C and D, finds that the allegations in Accusation and Petition to Revoke Probation
28 No. 800-2016-027508 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent PHILLIP CHUNG PIL PAIK, M.D. has subjected his Physician's and Surgeon's Certificate No. A 50381 to discipline.

2. A copy of the Accusation and Petition to Revoke Probation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Medical Board of California is authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the following violations alleged in the Accusation and Petition to Revoke Probation:

a. Pursuant to a November 5, 2015, Decision in the *Matter of the Accusation and Petition to Revoke Probation*, Case No. 800-2014-006029, Respondent was publicly reprimanded and ordered to comply with two conditions: (1) that respondent must successfully complete a Clinical Training Program and (2) that he must comply with the Board's Decision already in effect, Case No. 06-2004-161214. The Clinical Training Program required respondent to enroll in an approved program by February 4, 2016, and to successfully complete it no later than August 4, 2016. In addition, the condition stated that respondent may not practice medicine until he has been notified by the Board in writing that he has successfully completed an approved clinical training program.

b. Respondent's license is subject to revocation for his failure to complete the Clinical Training Program condition precedent and to provide proof thereof to the Board which is a violation of section 2234 of the Code.

c. Respondent's license is subject to revocation because he failed to comply with Probation Condition 2 in Case No. 06-2004-161214: "Respondent shall submit to the Division or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation." Respondent is out of compliance with this condition because he failed to submit for prior approval education courses for 2014, 2015, 2016, and 2017.

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1 d. Respondent's license is subject to revocation for his failure to comply with
2 Probation Condition 6 in Case No. 06-2004-161214: "Respondent shall undergo and continue
3 psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the
4 Division or its designee deems that no further psychotherapy is necessary. . . . Respondent shall
5 have the treating psychotherapist submit quarterly status reports to the Division or its designee."
6 Respondent is out of compliance since he has failed to ensure that a quarterly status report was
7 submitted for the third quarter of 2015, which was due on October 10, 2016.

8 e. Respondent's license is subject to revocation because he failed to comply with
9 Probation Condition 13 in Case No. 06-2004-161214: "Respondent shall submit quarterly
10 declarations under penalty of perjury on forms provided by the Division, stating whether there has
11 been compliance with all the conditions of probation. Respondent shall submit quarterly
12 declarations not later than 10 calendar days after the end of the preceding quarter." Respondent is
13 out of compliance with this condition since he has failed to submit any quarterly declarations
14 since April 2016.

15 f. Respondent's license is subject to revocation because he failed to comply with
16 Probation Condition 14 in Case No. 06-2004-161214: "Respondent shall comply with the
17 Division's probation unit. Respondent shall, at all times, keep the Division informed of
18 Respondent's business and residence addresses. Changes in such addresses shall be immediately
19 communicated in writing to the Division or its designee...." Respondent is out of compliance
20 with this condition since he has failed to advise the Board of his current addresses.

21 g. Respondent's license is subject to revocation because he failed to comply with
22 Probation Condition 15 in Case No. 06-2004-161214: "Respondent shall be available in person
23 for interviews either at respondent's place of business or at the probation unit office, with the
24 Division or its designee upon request at various intervals and either with or without prior notice
25 throughout the term of probation." Respondent is out of compliance with this condition, since he
26 has failed to attend his scheduled interview.

27 h. Respondent's license is subject to revocation because he failed to comply with
28 Probation Condition 21 in Case No. 06-2004-161214: "Respondent shall pay the costs associated

1 with probation monitoring each and every year of probation, as designated by the Division, which
2 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
3 California and delivered to the Division or its designee no later than January 31 of each calendar
4 year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.”
5 Respondent is out of compliance with this condition, since Respondent failed to make any
6 payments towards monitoring costs.

7 i. Respondent’s license is subject to revocation because he failed to comply with
8 Probation Condition 19 in Case No. 06-2004-161214: “Failure to fully comply with any term or
9 condition of probation is a violation of probation. If respondent violates probation in any respect,
10 the Division, after giving respondent notice and the opportunity to be heard, may revoke
11 probation and carry out the disciplinary order that was stayed.”

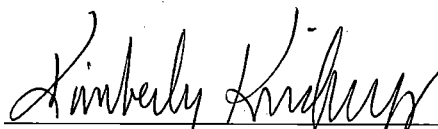
12 ORDER

13 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A 50381, heretofore
14 issued to Respondent PHILLIP CHUNG PIL PAIK, M.D., is revoked.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
16 written motion requesting that the Decision be vacated and stating the grounds relied on within
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on January 11, 2018 at 5:00 p.m.

20 It is so ORDERED December 12, 2017

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23 FOR THE MEDICAL BOARD OF CALIFORNIA
24 DEPARTMENT OF CONSUMER AFFAIRS
25 Kimberly Kirchmeyer
26 Executive Director
27
28

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
BENETH A. BROWNE
Deputy Attorney General
State Bar No. 202679
California Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-7816
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against,

PHILLIP CHUNG PIL PAIK, M.D.
11660 Scripps Lake Drive
San Diego, CA 92131-2364

Physician's and Surgeon's Certificate
No. A 50381,

Respondent.

Case No. 800-2016-027508

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On January 28, 1992, the Board issued Physician's and Surgeon's Certificate ("Certificate") No. A 50381 to Phillip Chung Pil Paik, M.D. ("Respondent"). On January 31, 2008, Respondent's Certificate became delinquent. On February 3, 2013, Respondent renewed his Certificate. The Certificate was in effect at all times relevant to the charges brought herein,

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1 except as specifically noted in this Accusation and Petition to Revoke Probation, and will expire
2 on January 31, 2018, unless renewed.

3 DISCIPLINARY HISTORY

4 3. By Decision dated October 23, 2006, and effective November 22, 2006, "*In the*
5 *Matter of the Accusation Against Phillip Chung Pil Paik, M.D.*," Case No. 06-2004-161214 (the
6 "2006 Decision"), the Board revoked Respondent's Certificate to practice medicine. The
7 revocation was stayed, and Respondent's Certificate was placed on probation for a period of
8 seven (7) years, with certain terms and conditions. A true and correct copy of the 2006 Decision
9 is attached hereto as Exhibit A.

10 4. By Decision dated November 5, 2015, and effective December 4, 2015, "*In the*
11 *Matter of the Accusation and Petition to Revoke Probation Against Phillip Chung Pil Paik,*
12 *M.D.*," Case No. 800-2014-006029 (the "2015 Decision"), Respondent was publicly reprimanded
13 for practicing medicine without a valid, unrevoked, or unsuspended certificate in violation of
14 Business and Professions Code section 2052, and in violation of terms and conditions of his
15 probation in the Decision entered in *In the Matter of the Accusation Against Phillip Chang Pil*
16 *Paik, M.D.*, Case No. 06-2004-161214. A true and correct copy of the 2015 Decision is attached
17 hereto as Exhibit B.

18 JURISDICTION

19 5. This Accusation and Petition to Revoke Probation is brought before the Board under
20 the authority of the following laws. All section references are to the Business and Professions
21 Code unless otherwise indicated.

22 6. Section 2229 of the Code states in relevant part, "Protection of the public shall be the
23 highest priority of the [Board]...and administrative law judges of the Medical Quality Hearing
24 Panel in exercising their disciplinary authority."

25 7. Section 2004 of the Code states:

26 "The board shall have the responsibility for the following:

27 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
28 Act.

- 1 “(b) The administration and hearing of disciplinary actions.
- 2 “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
- 3 administrative law judge.
- 4 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
- 5 disciplinary actions.
- 6 “(e) Reviewing the quality of medical practice carried out by physician and surgeon
- 7 certificate holders under the jurisdiction of the board.
- 8 “(f) Approving undergraduate and graduate medical education programs.
- 9 “(g) Approving clinical clerkship and special programs and hospitals for the programs in
- 10 subdivision (f).
- 11 “(h) Issuing licenses and certificates under the board's jurisdiction.
- 12 “(i) Administering the board's continuing medical education program.”

13 8. Section 2227 of the Code provides that a licensee who is found guilty under the

14 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed

15 one year, placed on probation and required to pay the costs of probation monitoring, or such other

16 action taken in relation to discipline as the Board deems proper.

17 9. Section 2234 of the Code, states:

18 “The board shall take action against any licensee who is charged with unprofessional

19 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not

20 limited to, the following:

21 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the

22 violation of, or conspiring to violate any provision of this chapter.

23 “(b) Gross negligence.

24 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or

25 omissions. An initial negligent act or omission followed by a separate and distinct departure from

26 the applicable standard of care shall constitute repeated negligent acts.

27 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate

28 for that negligent diagnosis of the patient shall constitute a single negligent act.

1 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
2 constitutes the negligent act described in paragraph (1), including, but not limited to, a
3 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
4 applicable standard of care, each departure constitutes a separate and distinct breach of the
5 standard of care.

6 “(d) Incompetence.

7 “(e) The commission of any act involving dishonesty or corruption which is substantially
8 related to the qualifications, functions, or duties of a physician and surgeon.

9 “(f) Any action or conduct which would have warranted the denial of a certificate.

10 “(g) The practice of medicine from this state into another state or country without meeting
11 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
12 apply to this subdivision. This subdivision shall become operative upon the implementation of the
13 proposed registration program described in Section 2052.5.

14 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
15 participate in an interview by the board. This subdivision shall only apply to a certificate holder
16 who is the subject of an investigation by the board.”

17 10. Section 118 of the Code states:

18 “(a) The withdrawal of an application for a license after it has been filed with a board in
19 the department shall not, unless the board has consented in writing to such withdrawal, deprive
20 the board of its authority to institute or continue a proceeding against the applicant for the denial
21 of the license upon any ground provided by law or to enter an order denying the license upon any
22 such ground.

23 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
24 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
25 order of a court of law, or its surrender without the written consent of the board, shall not, during
26 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
27 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
28 provided by law or to enter an order suspending or revoking the license or otherwise taking

1 disciplinary action against the licensee on any such ground.

2 “(c) As used in this section, ‘board’ includes an individual who is authorized by any
3 provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’
4 ‘registration,’ and ‘permit.’”

5 11. Probation Condition 19 the 2006 Decision provides:

6 “Failure to fully comply with any term or condition of probation is a violation of probation,
7 if respondent violates probation in any respect, the Division, after giving respondent notice and an
8 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
9 stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed
10 against respondent during probation, the Division¹ shall have continuing jurisdiction until the
11 matter is final, and the period of probation shall be extended until the matter is final.”

12 CAUSE FOR DISCIPLINE

13 (Failure to Complete Clinical Training Program)

14 12. Respondent is subject to disciplinary action under Code section 2234 in that he
15 committed unprofessional conduct by failing to complete the required clinical training program.
16 The circumstances are as follows:

17 13. On or about November 5, 2015, a Decision, with the effective date of December 4,
18 2015, was adopted by the Board in the *Matter of the Accusation and Petition to Revoke*
19 *Probation*, Case No. 800-2014-006029. The Decision served as a Public Reprimand with two
20 conditions: (1) that respondent must successfully complete a Clinical Training Program and (2)
21 that he comply with the Board’s Decision already in effect, Case No. 06-2004-161214. The
22 Clinical Training Program condition precedent required respondent to enroll in an approved
23 program by February 4, 2016, and to successfully complete it no later than August 4, 2016. In
24 addition, the condition stated that respondent may not practice medicine until he has been notified
25 by the Board in writing that he has successfully completed an approved clinical training program.

26 ¹ California Business and Professions Code section 2002, as amended and effective
27 January 1, 2008, provides that, unless otherwise expressly provided, the term “[B]oard” as used in
28 the Medical Practice Act refers to the Medical Board of California. References to the “Division
of Medical Quality” and “Division of Licensing” set forth in the Medical Practice Act are also
referable to the Medical Board of California.

1 14. On or about December 18, 2015, a probation analyst sent a letter to respondent's
2 address of record advising him of the Clinical Training Program condition precedent.

3 15. On or about August 19, 2016, the analyst sent respondent a letter advising him to
4 provide proof of his compliance with the Clinical Training Program condition by September 5,
5 2016, or the matter would be referred to the Attorney General's Office to file further action
6 against his license. The letter was sent via regular first class and via certified mail with a return
7 receipt request. On or about September 26, 2016, the letter was returned unclaimed.

8 16. Respondent's failure to complete the Clinical Training Program condition precedent
9 and to provide proof thereof to the Board constitutes Unprofessional Conduct in violation of
10 section 2234 of the Code.

11 FIRST CAUSE TO REVOKE PROBATION

12 (Education Course)

13 17. At all times after the effective date of Respondent's probation, Condition 2 stated:

14 "Respondent shall submit to the Division or its designee for its prior approval educational
15 program(s) or course(s) which shall not be less than 40 hours per year, for each year of
16 probation."

17 18. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
19 are as follows:

20 A. On or about May 9, 2014, Respondent was advised he must submit for approval an
21 educational program for each year of probation. Respondent said he understood and would
22 comply with this condition. As of this date, however, Respondent is out of compliance with this
23 condition because he has failed to submit for prior approval education courses for 2014, 2015,
24 2016, and 2017.

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1 forms. The reporting periods were explained, emphasizing the importance of completing the
2 forms, timely submitting them, and the fact that he would be signing them under penalty of
3 perjury. Respondent signed a Quarterly Declaration Due Date form.

4 B. On or about April 18, 2016, a notice was sent to Respondent reminding him of his
5 requirement to submit Quarterly Declarations no later than 10 calendar days after the end of the
6 preceding quarter. As of this date, however, Respondent is out of compliance with this condition
7 since he has failed to submit any quarterly declarations since April 2016.

8 FOURTH CAUSE TO REVOKE PROBATION

9 (Probation Unit Compliance)

10 23. At all times after the effective date of Respondent's probation, Condition 14 stated:

11 "Respondent shall comply with the Division's probation unit. Respondent shall, at all
12 times, keep the Division informed of Respondent's business and residence addresses. Changes in
13 such addresses shall be immediately communicated in writing to the Division or its designee..."

14 24. Respondent's probation is subject to revocation because he failed to comply with
15 Probation Condition 14, referenced above. The facts and circumstances regarding this violation
16 are as follows:

17 A. On or about May 9, 2014, Respondent was advised he must keep his Probation Unit
18 monitor informed of his address of business and residence, both of which would serve as his
19 address of record. Respondent was also told to immediately inform his monitor in writing of any
20 address change; adding, he must also inform the Board's Licensing Unit, as he normally would if
21 not on probation. As of this date, however, Respondent is out of compliance with this condition
22 since he has failed to advise the Board of his current addresses.

23 FIFTH CAUSE TO REVOKE PROBATION

24 (Interview With Division Or Its Designee)

25 25. At all times after the effective date of Respondent's probation, Condition 15 stated:

26 "Respondent shall be available in person for interviews either at respondent's place of
27 business or at the probation unit office, with the Division or its designee upon request at various
28 intervals and either with or without prior notice throughout the term of probation."

26. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about May 9, 2014, Respondent was told he must appear in person for interviews at his place of business or at the probation unit office, upon request at various intervals and either with or without prior notice. He expressed his understanding and said he would comply.

B. On or about December 27, 2016, a letter was sent to Respondent's address of record scheduling him for a Quarterly Interview on December 30, 2016. Respondent, however, failed to attend his scheduled interview. Respondent is out of compliance with this condition.

SIXTH CAUSE TO REVOKE PROBATION

(Probation Monitoring Costs)

27. At all times after the effective date of Respondent's probation, Condition 21 stated:

“Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.”

28. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 21, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about May 9, 2014, Respondent was told he would be billed for the annual probation monitoring costs at the end of each year. His probation monitor further stated that the first due date would be January 1, 2015, and that a failure to pay the costs within the due date would be a violation of probation. Respondent expressed his understanding. He has yet to make a payment. Respondent is therefore out of compliance with this condition.

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1 3. Revoking, suspending or denying approval of Respondent Phillip Chung Pil Paik,
2 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and
3 advanced practice nurses;

4 4. Ordering Phillip Chung Pil Paik, M.D. to pay the Board, if placed on probation, the
5 costs of probation monitoring; and

6 5. Taking such other and further action as deemed necessary and proper.

7
8 DATED:

9 June 30, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 06-2004-161214

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Phillip Chung Pil Paik, M.D.

Physician's and Surgeon's
Certificate No. A 50381

Respondent

File No. 06-2004-161214

DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 22, 2006

IT IS SO ORDERED October 23, 2006.

MEDICAL BOARD OF CALIFORNIA

By: Cesar A. Aristeiguieta, M.D.
Cesar A. Aristeiguieta, M.D.
Chair, Consolidated Panel
Division of Medical Quality

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

PHILLIP CHUNG PIL PAIK, M.D.,
7750 Dagget Street, Suite 108
San Diego, California 92111

Physician and Surgeon's
Certificate No. A 50381,

Respondent.

Case No. 06-2004-161214

OAH No. L2006011019

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on June 19 through 22, 2006, in Los Angeles, California.

Deputy Attorney General Gloria L. Castro represented complainant.

Robert B. Zaro, Attorney at Law, represented Phillip Chung Pil Paik, M.D. (respondent). Respondent was present throughout the hearing.

Oral and documentary evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. On December 7, 2005, David T. Thorton made and filed the Accusation in his official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On January 28, 1992, the Medical Board of California issued Physician and Surgeon's Certificate No. A 50381 to respondent. The certificate was in full force and effect at all times relevant to the Accusation.

3. On August 1, 2005, in the Superior Court of California, County of Los Angeles, in case number 4SB09737, respondent entered a plea of nolo contendere to one count charging a violation of Business and Professions Code section 729, subdivision (a), sexual exploitation by a physician, a misdemeanor. Judgment was entered and imposition of sentence was suspended. Respondent was placed on probation for two years on certain conditions whereby respondent was ordered to pay a fine of \$1,755.00, and perform 100 hours of community service.

4. The incident underlying the conviction occurred on September 14, 2004. Patient L.C. arrived at respondent's office at approximately 5:00 p.m. to have sutures removed after undergoing an eyelash transplant.¹ After respondent removed the sutures, he and the patient walked to the reception area where respondent asked if the patient had undergone any other cosmetic surgery procedures. The patient answered that she had previously undergone a breast implant procedure and was interested in liposuction for her abdominal area. Respondent replied that he had been trained in liposuction and offered to perform a pre-liposuction examination. Respondent and the patient returned to the examination room. Respondent began the examination by performing a "pinch test" on various parts of the patient's body to determine the amount of fat that could be suctioned in a liposuction procedure. At some point during the examination, respondent asked if he could see and touch the patient's breasts because of respondent's "professional curiosity" regarding her breast implants. The patient agreed. At some point during the examination, respondent became sexually aroused. He nevertheless continued the examination, and when he completed it, respondent told the patient "I'm so stimulated." The patient became offended, put her clothes on and walked out of respondent's office.

5. Respondent realized that he had crossed ethical boundaries and immediately apologized to the patient. Further, respondent admitted his inappropriate conduct to local and state authorities.

6. Respondent sought counseling and underwent psychological and psychiatric evaluations prior to the hearing in this matter. The experts who testified at the hearing opined that respondent is not a sexual predator or sexual addict because he does not habitually or compulsively engage in sexual conduct for self gratification. Further, there is no evidence that respondent has a history of manipulating others for sexual gratification. Finally, respondent does not have a history of engaging in other activities,² which may give an indication of sexual addiction. The undersigned found the experts to be well qualified and credible in their testimony. Their testimony is supported by respondent's record of practicing for 14 years with no previous record of discipline or prior complaints of sexual misconduct.

¹ The appointment was scheduled for 5:00 p.m. at the patient's request to accommodate her work schedule.

² These activities may include obsessions with pornography, prostitution, escort services, strip clubs and voyeurism.

7. Respondent is remorseful and ashamed of his conduct. He informed his wife of his misconduct, and although she was shocked, angered and hurt, she remains supportive.

8. Respondent received a Master of Divinity from Princeton Theological Seminary in 1981. He is also an ordained minister and is extremely active in his church. In addition, throughout his medical career respondent has donated time and medical services to the poor in different countries. In fact, he participated in 28 medical missions through his church. This included travel to third world countries where he provided medical services to people who were underserved or did not have professional medical care in their communities.

COSTS OF INVESTIGATION AND ENFORCEMENT

9. Complainant requested that respondent be ordered to pay reasonable costs of investigation and enforcement pursuant to Business and Professions Code section 125.3. However, complainant did not present evidence to support this request.

DISCUSSION

As noted above, respondent became sexually aroused at some point during the liposuction examination of the patient. Respondent should have stopped the examination immediately upon feeling aroused, but he continued to perform the examination and thereafter made inappropriate sexual remarks that upset the patient. Since the patient had indicated that she was interested in liposuction in her abdominal area, respondent's liposuction examination should have been limited to that area. By going beyond the abdominal area during the examination, continuing the examination after feeling sexually aroused, and making inappropriate statements such as "I feel stimulated," respondent crossed ethical boundaries and violated Business and Professions Code sections 726 and 729, subdivision (a). Further, respondent's conduct during the liposuction examination was unprofessional under Business and Professions Code section 2234, subdivision (a).

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2236, based on respondent's conviction set forth in Factual Finding 3.

2. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 726, based on Factual Findings 3 and 4, and the Discussion section of this decision.

3. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, subdivisions (a), based on Factual Findings 3 and 4, and the Discussion section of this decision.

4. Although respondent is guilty of inappropriate sexual conduct with patient L.C., the evidence did not establish that respondent is a sexual predator. This does not excuse respondent's conduct with the individual patient. But it is a factor to consider in determining the appropriate discipline in this case. Consideration is also given to respondent's prior record as physician, his service to his church and the community, and his participation in medical missions where he provided medical care to the underserved. Based on the entire record, revocation stayed with a significant suspension and strict probationary conditions is the appropriate discipline in this case.

5. Cause does not exist to order respondent to pay costs of investigation and enforcement under Business and Professions Code section 125.3, based on Factual Finding 10.

ORDER

Certificate No. A 50381, issued to respondent Phillip Chung Pil Paik, M.D., is revoked pursuant to Legal Conclusions 1 through 3. However, the revocation is stayed and respondent is placed on probation for seven (7) years upon the following terms and conditions:

1. Actual Suspension

As part of probation, respondent is suspended from the practice of medicine for 60 days beginning the sixteenth (16th) day after the effective date of this decision.

2. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Division or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. Ethics Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Division or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Division or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Division or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Division or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Division or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Division or its designee in writing.

5. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on a whatever periodic basis thereafter may be required by the Division or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed board certified psychiatrist, who shall consider any information provided by the Division or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Division or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Division or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

6. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Division or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Division or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Division or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may

deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee. The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed board certified psychiatrist.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

7. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Division or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

8. Monitoring - Practice

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to

any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Division or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice and billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Division or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine and whether respondent is practicing medicine safely.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

9. Prohibited Practice

During probation, respondent is prohibited from performing pubic hair transplants on female patients. After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, respondent shall orally notify the patient that respondent does not perform pubic hair transplants on female patients. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this Decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not perform pubic hair transplants on female patients. Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

10. Notification

Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

11. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

12. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

13. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

14. Probation Unit Compliance

Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

15. Interview with Division or its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

16. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

17. Failure to Practice Medicine – California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

18. Completion of Probation

Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

19. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

20. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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21. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: July 26, 2006


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

Exhibit B

Decision and Order

Medical Board of California Case No. 800-2014-006029

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
And Petition to Revoke Probation)
Against:)

Phillip Chung Pil Paik M.D.)

File No. 800-2014-006029

Physician's and Surgeon's)
Certificate No. A 50381)

Respondent)
_____)

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 4, 2015.

IT IS SO ORDERED November 5, 2015.

MEDICAL BOARD OF CALIFORNIA

By: Dev Gnanadev MD
Dev Gnanadev, Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 PEGGIE BRADFORD TARWATER
Deputy Attorney General
4 State Bar No. 169127
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 620-6068
Facsimile: (213) 897-9395
7 E-mail: Peggie.Tarwater@doj.ca.gov
Attorneys for Complainant
8

9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 PHILLIP CHUNG PIL PAIK, M.D.

14 Physician's and Surgeon's Certificate No. A
15 50381

16 Respondent.
17

Case No. 800-2014-006029

OAH No. 2015030161

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
22 Board of California ("Board"). She brought this action solely in her official capacity and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Peggie Bradford Tarwater, Deputy Attorney General.

25 2. Respondent Phillip Chung Pil Paik, M.D. ("Respondent") is represented in this
26 proceeding by attorney Kevin D. Cauley, whose address is 624 South Grand Avenue, 22nd Floor
27 Los Angeles, California 90017-3323.
28

3. On January 28, 1992, the Board issued Physician's and Surgeon's Certificate No. A 50381 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 800-2014-006029 and will expire on January 31, 2016, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. 800-2014-006029 was filed before the Board and is currently pending against Respondent. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on November 12, 2014. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation.

5. A copy of Accusation and Petition to Revoke Probation No. 800-2014-006029 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation and Petition to Revoke Probation No. 800-2014-006029. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 50381 issued to Respondent shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with the Accusation and Petition to Revoke Probation No. 800-2014-006029 is as follows:

Between February 1, 2014 and March 1, 2014, Respondent practiced medicine without a valid, unrevoked, or unsuspended certificate, in violation of Business and Professions Code section 2052, and in violation of terms and conditions of his probation in the Decision entered in *In the Matter of the Accusation Against Phillip Chung Pil Paik, M.D.*, Case No. 06-2004-161214.

1. CLINICAL TRAINING PROGRAM – Condition Precedent. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (“Program”). Respondent shall successfully complete the Program not later than six months after Respondent’s initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a comprehensive assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40-hour program of clinical education in the area of practice in which Respondent was alleged to be

1 deficient and which takes into account data obtained from the assessment, Decisions, Accusations
2 and Petition to Revoke Probation, and any other information that the Board or its designee deems
3 relevant. Respondent shall pay all expenses associated with the clinical training program.

4 Based on Respondent's performance and test results in the assessment and clinical
5 education, the Program will advise the Board or its designee of its recommendation(s) for the
6 scope and length of any additional educational or clinical training, treatment for any medical
7 condition, treatment for any psychological condition, or anything else affecting Respondent's
8 practice of medicine. Respondent shall comply with Program recommendations.

9 At the completion of any additional educational or clinical training, Respondent shall
10 submit to and pass an examination. Determination as to whether Respondent successfully
11 completed the examination or successfully completed the program is solely within the program's
12 jurisdiction.

13 Respondent shall not practice medicine until he has successfully completed the Program
14 and has been so notified by the Board or its designee in writing, except that Respondent may
15 practice in a clinical training program approved by the Board or its designee. Respondent's
16 practice of medicine shall be restricted only to that which is required by the approved training
17 program.

18 2. PROBATION COMPLIANCE. The Decision in *In the Matter of the Accusation*
19 *Against Phillip Chung Pil Paik, M.D.*, Case No. 06-2004-161214, as contained in Exhibit A, shall
20 remain in full force and effect.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Kevin D. Cauley. I understand the stipulation and the effect it will
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: _____

9 PHILLIP CHUNG PIL PAIK, M.D.
Respondent

10 I have read and fully discussed with Respondent Phillip Chung Pil Paik, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: _____

14 KEVIN D. CAULEY
Attorney for Respondent

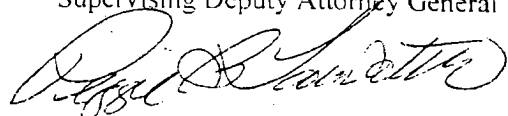
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16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Medical Board of California.

19 Dated: July 22, 2015

20 Respectfully submitted.

21 KAMALA D. HARRIS
Attorney General of California
22 ROBERT MCKIM BELL
Supervising Deputy Attorney General

23 

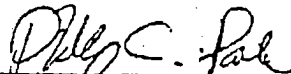
24 PEGGIE BRADFORD TARWATER
25 Deputy Attorney General
26 Attorneys for Complainant

27 LA2014613414

1 ACCEPTANCE

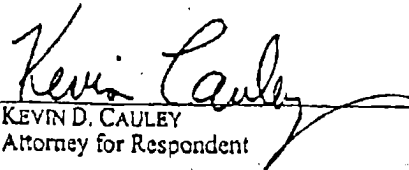
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Kevin D. Cauley. I understand the stipulation and the effect it will
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: 07-21-2015


9 PHILLIP CHUNG PIL PAIK, M.D.
Respondent

10 I have read and fully discussed with Respondent Phillip Chung Pil Paik, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: 7-21-15


14 KEVIN D. CAULEY
Attorney for Respondent

15
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Medical Board of California.

19 Dated:

Respectfully submitted,

20
21 KAMALA D. HARRIS
Attorney General of California
22 ROBERT MCKIM BELL
Supervising Deputy Attorney General

23
24 PEGGIE BRADFORD TARWATER
25 Deputy Attorney General
26 Attorneys for Complainant

27 LA2014613414

Exhibit A

Accusation and Petition to Revoke Probation No. 800-2014-006029

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 12 20 14
BY R. FIRDANS ANALYST

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 PEGGIE BRADFORD TARWATER
Deputy Attorney General
4 State Bar No. 169127
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 620-6068
Facsimile: (213) 897-9395
7 E-mail: Peggie.Tarwater@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 800-2014-006029

13 PHILLIP CHUNG PIL PAIK, M.D.

14 11660 Scripps Lake Drive
15 San Diego, California 92131-2364,

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 Physician's and Surgeon's Certificate A 50381,
17 Respondent.

18
19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation and Petition to Revoke
23 Probation solely in her official capacity as the Executive Director of the Medical Board of
24 California ("Board").

25 2. On January 28, 1992, the Board issued Physician's and Surgeon's Certificate
26 ("Certificate") number A 50381 to Phillip Chung Pil Paik, M.D. ("Respondent"). On January 31,
27 2008, Respondent's Certificate became delinquent. On February 3, 2013, Respondent renewed
28 his Certificate. The Certificate was in effect at all times relevant to the charges brought herein,

1 except as specifically noted in this Accusation and Petition to Revoke Probation, and will expire
2 on January 31, 2016, unless renewed.

3 DISCIPLINARY HISTORY

4 3. By Decision dated October 23, 2006, and effective November 22, 2006, "*In the*
5 *Matter of the Accusation Against Phillip Chung Pil Paik, M.D.*," Case No. 06-2004-161214 (the
6 "2006 Decision"), the Board revoked Respondent's Certificate to practice medicine. The
7 revocation was stayed, and Respondent's Certificate was placed on probation for a period of
8 seven (7) years, with certain terms and conditions. A true and correct copy of the Decision is
9 attached hereto as Exhibit A.

10 JURISDICTION

11 4. This Accusation and Petition to Revoke Probation is brought before the Board under
12 the authority of the following laws.

13 5. Business and Professions Code section 2004¹ states:

14 "The board shall have the responsibility for the following:

15 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
16 Act.

17 "(b) The administration and hearing of disciplinary actions.

18 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
19 administrative law judge.

20 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
21 disciplinary actions.

22 "..."

23 6. Section 2227 of the Code provides that a licensee who is found guilty under the
24 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
25 one year, placed on probation and required to pay the costs of probation monitoring, or such other
26 action taken in relation to discipline as the Board deems proper.

27
28 ¹ All statutory references are to the Business and Professions Code, unless otherwise indicated.

1 7. Section 2234 of the Code states:

2 "The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
4 limited to, the following:

5 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
6 violation of, or conspiring to violate any provision of this chapter.

7 "...."

8 8. Section 2021 of the Code requires that each licensee "report to the board each and
9 every change of address within 30 days after each change, giving both the old and new address."

10 9. Section 2052 of the Code states:

11 "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
12 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
13 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
14 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
15 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
16 certificate . . . , or without being authorized to perform the act pursuant to a certificate obtained in
17 accordance with some other provision of law, is guilty of a public offense, punishable by a fine
18 not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by
19 imprisonment in a county jail not exceeding one year, or by both the fine and either
20 imprisonment.

21 "...."

22 "(c) The remedy provided in this section shall not preclude any other remedy provided by
23 law."

24 10. Section 118, subdivision (b), of the Code states:

25 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board
26 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
27 of a court of law, or its surrender without the written consent of the board, shall not, during any
28 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of the

1 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
2 provided by law or to enter an order suspending or revoking the license or otherwise taking
3 disciplinary action against the licensee on any such ground.”

4 11. As also provided in the Decision, Probation Condition 19 provides:

5 “Failure to fully comply with any term or condition of probation is a violation
6 of probation. If respondent violates probation in any respect, the Division, after
7 giving respondent notice and the opportunity to be heard, may revoke probation and
8 carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke
9 Probation, or an Interim Suspension Order is filed against respondent during
10 probation, the Division² shall have continuing jurisdiction until the matter is final, and
11 the period of probation shall be extended until the matter is final.”

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Practicing Medicine Without a Valid License)

14 12. Respondent is subject to disciplinary action under section 2052 of the Code, which
15 prohibits the practice of medicine without a valid, unrevoked, or unsuspended certificate. The
16 circumstances are as follows:

17 13. Probation Condition 4, “Professional Boundaries Program,” as set forth in the
18 Decision, provides:

19 “Within 60 calendar days from the effective date of this Decision, respondent shall enroll in
20 a professional boundaries program, at respondent’s expense, equivalent to the Professional
21 Boundaries Program, Physician Assessment and Clinical Education Program at the University of
22 California, San Diego School of Medicine (“Program”). Respondent, at the Program’s discretion,
23 shall undergo and complete the Program’s assessment of respondent’s competency, mental health
24 and/or neuropsychological performance, and at minimum, a 24 hour program of interactive

25 _____
26 ² California Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term “[B]oard” as used in the Medical Practice Act refers to
28 the Medical Board of California. References to the “Division of Medical Quality” and “Division of Licensing” set
forth in the Medical Practice Act are also referable to the Medical Board of California.

1 education and training in the area of boundaries, which takes into account data obtained from the
2 assessment and from the Decision(s), Accusation(s) and any other information that the Division
3 or its designee deems relevant. The Program shall evaluate respondent at the end of the training
4 and the Program shall provide any data from the assessment and training as well as the results of
5 the evaluation to the Division or its designee.

6 "Failure to complete the entire Program not later than six months after respondent's initial
7 enrollment shall constitute of a violation of probation unless the Division or its designee agrees in
8 writing to a later time for completion. Based on respondent's performance in and evaluations
9 from the assessment, education, and training, the Program shall advise the Division or its
10 designee of its recommendation(s) for additional education, training, psychotherapy and other
11 measures necessary to ensure that respondent can practice medicine safely. Respondent shall
12 comply with Program recommendations. At the completion of the Program, respondent shall
13 submit to a final evaluation. The Program shall provide the results of the evaluation to the
14 Division or its designee.

15 "The Program's determination whether or not respondent successfully completed the
16 Program shall be binding.

17 "Failure to participate in and complete successfully all phases of the Program, as outlined
18 above, is a violation of probation.

19 *"Respondent shall not practice medicine until respondent has successfully completed the*
20 *Program and has been so notified by the Division or its designee in writing."* (Emphasis added.)

21 14. On or about November 16, 2006, Respondent advised the Board that he was leaving
22 California to serve as a medical missionary, as he put it, "fulltime [for the] rest of my life."

23 15. On February 11, 2013, the Board mailed to Respondent, at his address of record, a
24 letter reminding him that he was suspended from the practice of medicine until certain conditions
25 of probation had been met.

26 16. On or about August 8, 2013, the Board mailed to Respondent, at his address of
27 record, another letter reminding him that he was suspended from the practice of medicine until
28 certain conditions of probation had been met.

1 17. Respondent practiced as a physician at a practice in Los Angeles owned by Dr. Y.H.,
2 M.D., from approximately February 1, 2014, through March 1, 2014.

3 18. Prior to engaging in the practice of medicine, Respondent did not complete the
4 Professional Boundaries Program as required in Probation Condition 4.

5 19. Between February 1, 2014 and March 1, 2014, Respondent practiced medicine
6 without a valid, unrevoked, or unsuspended certificate, in violation of section 2052 of the Code.
7 Therefore, cause for discipline exists.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Failure to Notify Board of Address Change)

10 20. Respondent is subject to disciplinary action pursuant to section 2021, subdivision (b),
11 of the Code, which requires that a licensee notify the Board of each and every change of address
12 within 30 days of the change. The circumstances are as follows:

13 21. At the time the Decision became effective, Respondent's address of record was 7750
14 Dagget Street, Suite 108, San Diego, California 92111.

15 22. On or about February 21, 2007, the Board mailed to Respondent, at his address of
16 record, a letter indicating Respondent needed to immediately notify the Board of any changes to
17 his residence or business address.

18 23. The Board subsequently mailed multiple letters to Respondent at his address of
19 record, reminding him of the need to notify the Board of any address changes and to notify the
20 Board should he decide to reside or practice in California. The letters were dated February 28,
21 2007, July 12, 2007, July 3, 2009, June 10, 2011, June 27, 2012, February 11, 2013, and August
22 8, 2013.

23 24. The June 10, 2011, June 27, 2012, and August 8, 2013, letters to Respondent were
24 returned to the Board as undeliverable.

25 25. On or about October 3, 2013, Respondent updated his address of record to a Los
26 Angeles, California, location at which his mother lived, but he did not.

27 ///

28 ///

1 26. Respondent failed to report to the Board each and every change of address within 30
2 days after each change, as required by section 2021 of the Code. Therefore, cause for discipline
3 exists.

4 **FIRST CAUSE TO REVOKE PROBATION**

5 (Failure to Complete Professional Boundaries Course)

6 27. At all times after the effective date of the 2006 Decision, on November 22, 2006,
7 Probation Condition 4 prohibited Respondent from practicing medicine until he successfully
8 completed a Professional Boundaries Program, as set forth in paragraph 12 above.

9 28. Respondent's probation is subject to revocation because he failed to comply with
10 Probation Condition 4. Respondent failed to successfully complete the Professional Boundaries
11 Program prior to engaging in the practice of medicine in the State of California. The facts and
12 circumstances are as follows:

13 29. The allegations in paragraphs 12 through 19 are incorporated herein as if fully set
14 forth.

15 30. Respondent violated Probation Condition 4, and cause for revocation exists.

16 **SECOND CAUSE TO REVOKE PROBATION**

17 (Failure to Notify Probation Unit of Business and Residence Address)

18 31. At all times after the effective date of the 2006 Decision, on November 22, 2006,
19 Probation Condition 14, "Probation Unit Compliance," provided:

20 "Respondent shall comply with the Division's probation unit. Respondent shall, at all
21 times, keep the Division informed of respondent's business and residence addresses. Changes of
22 such addresses shall be immediately communicated in writing to the Division or its designee. . . ."

23 32. Respondent's probation is subject to revocation because he failed to comply with
24 Probation Condition 14. Respondent failed to keep the probation unit informed of his business
25 and residence addresses. The facts and circumstances are as follows:

26 33. The allegations in paragraphs 20 through 26 are incorporated herein as if fully set
27 forth.

28 34. Respondent violated Probation Condition 14, and cause for revocation exists.

1 date of the Decision, submit to the Division or its designee for prior approval name(s) of persons
2 who will act as the third party chaperone.

3 "Each third party chaperone shall initial and date each patient medical record at the time the
4 chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the
5 Accusation(s), and fully understand the role of the third party chaperone.

6 "Respondent shall maintain a log of all patients seen for whom a third party chaperone is
7 required. The log shall contain the: 1) patient name, address and telephone number; 2) medical
8 record number; and 3) date of service. . . . Failure to maintain a log of all patients requiring a third
9 party chaperone, or to make the log available for immediate inspection and copying on the
10 premises, is a violation of probation.

11 44. Respondent's probation is subject to revocation because he failed to comply with
12 Probation Condition 7, which required the use of a third party chaperone. The facts and
13 circumstances are as follows:

14 45. During Respondent's absence from California, and in accordance with Probation
15 Condition 16, Respondent was relieved of the responsibility to comply with the third-party
16 chaperone requirement of Probation Condition 7; however, upon his return to California, on or
17 about December 20, 2013, Respondent was again required to comply with Probation Condition 7.

18 46. Respondent practiced as a physician at a practice owned by Y.H., M.D., located in
19 Los Angeles, California, from approximately February 1, 2014, through March 1, 2014. During
20 that time, Respondent treated two female patients.

21 47. Within 30 days of his return to California and/or prior to treating female patients:

22 (a) Respondent did not submit to the Board for prior approval name(s) of persons
23 who would act as the third party chaperone; and/or

24 (b) Respondent did not utilize an approved third party chaperone during the
25 treatment of the two female patients; and/or

26 (c) Respondent did not maintain a log of the patients for whom an approved third
27 party chaperone was required.

28 48. Respondent violated Probation Condition 7, and cause for revocation exists.

1 FIFTH CAUSE TO REVOKE PROBATION

2 (Failure to use Practice Monitor)

3 49. At all times after the effective date of the 2006 Decision, on November 22, 2006,
4 Probation Condition 8, "Monitoring – Practice," provided:

5 "Within 30 days of the effective date of this Decision, respondent shall submit to the
6 Division or its designee for prior approval as a practice monitor, the name and qualifications of
7 one or more licensed physicians and surgeons whose licenses are valid and in good standing
8 ."

9 "
10 "Within 60 calendar days of the effective date of this Decision, and continuing throughout
11 probation, respondent's practice and billing shall be monitored by the approved monitor.
12 Respondent shall make all records available for immediate inspection and copying on the
13 premises by the monitor at all times during business hours and shall retain the records for the
14 entire term of probation.

15 "The monitor(s) shall submit a quarterly written report to the Division or its designee which
16 includes an evaluation of respondent's performance, indicating whether respondent's practices are
17 within the standard of practice of medicine and whether respondent is practicing medicine safely.

18 "It shall be the sole responsibility of respondent to ensure that the monitor submits the
19 quarterly written reports to the Division or its designee within 10 calendar days after the end of
20 the preceding quarter.

21 "

22 "Failure to maintain all records, or to make all appropriate records available for immediate
23 inspection and copying on the premises, or to comply with this condition as outlined above is a
24 violation of probation."

25 50. Respondent's probation is subject to revocation because he failed to comply with
26 Probation Condition 8, requiring a practice monitor. The facts and circumstances are as follows:

27 51. During Respondent's absence from California, and in accordance with Probation
28 Condition 16, Respondent was relieved of the responsibility to comply with the practice monitor

1 requirement of Probation Condition 8; however, upon his return to California, on or about
2 December 20, 2013, Respondent was again required to comply with Probation Condition 8.

3 52. Respondent practiced as a physician at a practice owned by Y.H., M.D., located in
4 Los Angeles, California, from approximately February 1, 2014, through March 1, 2014.

5 53. Within 30 days of his return to California and/or prior to treating patients:

6 (a) Respondent did not submit to the Board for prior approval the name and
7 qualification of proposed any proposed practice monitor; and/or

8 (b) Respondent did not subject his practice to a practice or billing monitor.

9 54. Respondent violated Probation Condition 8, and cause for revocation exists.

10 **SIXTH CAUSE TO REVOKE PROBATION**

11 (Failure to Notify of Decision and Accusation)

12 55. At all times after the effective date of the 2006 Decision, on November 22, 2006,
13 Probation Condition 10, "Notification," provided:

14 "Prior to engaging in the practice of medicine the respondent shall provide a true copy of
15 the Decision [and] Accusation to . . . any . . . facility where respondent engages in the practice of
16 medicine, including all physician and locum tenens registries or other similar agencies, and to the
17 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
18 to respondent. Respondent shall submit proof of compliance to the Division or its designee
19 within 15 calendar days.

20 " . . . "

21 56. Respondent's probation is subject to revocation because he failed to comply with
22 Probation Condition 10, notification. The facts and circumstances are as follows:

23 57. Respondent practiced as a physician at a practice owned by Y.H., M.D., located in
24 Los Angeles, California, from approximately February 1, 2014, through March 1, 2014.

25 58. Respondent failed to provide a true copy of the 2006 Decision and Accusation to
26 Y.H., M.D. and/or failed to submit proof of compliance to the Board within 15 calendar days.

27 59. Respondent violated Probation Condition 10, and cause for revocation exists.

1 PRAAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board issue a decision:

4 1. Revoking the probation that was granted by the Medical Board of California in Case
5 No. 06-2004-161214 and imposing the disciplinary order that was stayed thereby revoking
6 Physician's and Surgeon's Certificate No. A 50381 issued to Respondent.


7 2. Revoking or suspending Physician's and Surgeon's Certificate Number A 50381,
8 issued to Respondent.

9 3. Revoking, suspending or denying approval of Respondent's authority to supervise
10 physician assistants, pursuant to section 3527 of the Code;

11 4. Ordering Respondent, if placed on probation, to pay to the Board the costs of
12 probation monitoring;

13 5. Taking such other and further action as deemed necessary and proper.

14 DATED: November 12, 2014

15 
16 KIMBERLY KIRCHMEYER
17 Executive Director
18 Medical Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant

22 LA2014613414
23
24
25
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27
28

Exhibit A

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Phillip Chung Pil Paik, M.D.

Physician's and Surgeon's
Certificate No. A 50381

Respondent

File No. 06-2004-161214

DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 22, 2006

IT IS SO ORDERED October 23, 2006.

MEDICAL BOARD OF CALIFORNIA

By: Cesar A. Aristeiguieta, MD
Cesar A. Aristeiguieta, M.D.
Chair, Consolidated Panel
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILLIP CHUNG PIL PAIK, M.D.,
7750 Dagget Street, Suite 108
San Diego, California 92111

Physician and Surgeon's
Certificate No. A 50381,

Respondent.

Case No. 06-2004-161214

OAH No. L2006011019

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on June 19 through 22, 2006, in Los Angeles, California.

Deputy Attorney General Gloria L. Castro represented complainant.

Robert B. Zaro, Attorney at Law, represented Phillip Chung Pil Paik, M.D. (respondent). Respondent was present throughout the hearing.

Oral and documentary evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. On December 7, 2005, David T. Thorton made and filed the Accusation in his official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On January 28, 1992, the Medical Board of California issued Physician and Surgeon's Certificate No. A 50381 to respondent. The certificate was in full force and effect at all times relevant to the Accusation.

3. On August 1, 2005, in the Superior Court of California, County of Los Angeles, in case number 4SB09737, respondent entered a plea of nolo contendere to one count charging a violation of Business and Professions Code section 729, subdivision (a), sexual exploitation by a physician, a misdemeanor. Judgment was entered and imposition of sentence was suspended. Respondent was placed on probation for two years on certain conditions whereby respondent was ordered to pay a fine of \$1,755.00, and perform 100 hours of community service.

4. The incident underlying the conviction occurred on September 14, 2004. Patient L.C. arrived at respondent's office at approximately 5:00 p.m. to have sutures removed after undergoing an eyelash transplant.¹ After respondent removed the sutures, he and the patient walked to the reception area where respondent asked if the patient had undergone any other cosmetic surgery procedures. The patient answered that she had previously undergone a breast implant procedure and was interested in liposuction for her abdominal area. Respondent replied that he had been trained in liposuction and offered to perform a pre-liposuction examination. Respondent and the patient returned to the examination room. Respondent began the examination by performing a "pinch test" on various parts of the patient's body to determine the amount of fat that could be suctioned in a liposuction procedure. At some point during the examination, respondent asked if he could see and touch the patient's breasts because of respondent's "professional curiosity" regarding her breast implants. The patient agreed. At some point during the examination, respondent became sexually aroused. He nevertheless continued the examination, and when he completed it, respondent told the patient "I'm so stimulated." The patient became offended, put her clothes on and walked out of respondent's office.

5. Respondent realized that he had crossed ethical boundaries and immediately apologized to the patient. Further, respondent admitted his inappropriate conduct to local and state authorities.

6. Respondent sought counseling and underwent psychological and psychiatric evaluations prior to the hearing in this matter. The experts who testified at the hearing opined that respondent is not a sexual predator or sexual addict because he does not habitually or compulsively engage in sexual conduct for self gratification. Further, there is no evidence that respondent has a history of manipulating others for sexual gratification. Finally, respondent does not have a history of engaging in other activities,² which may give an indication of sexual addiction. The undersigned found the experts to be well qualified and credible in their testimony. Their testimony is supported by respondent's record of practicing for 14 years with no previous record of discipline or prior complaints of sexual misconduct.

¹ The appointment was scheduled for 5:00 p.m. at the patient's request to accommodate her work schedule.

² These activities may include obsessions with pornography, prostitution, escort services, strip clubs and voyeurism.

7. Respondent is remorseful and ashamed of his conduct. He informed his wife of his misconduct, and although she was shocked, angered and hurt, she remains supportive.

8. Respondent received a Master of Divinity from Princeton Theological Seminary in 1981. He is also an ordained minister and is extremely active in his church. In addition, throughout his medical career respondent has donated time and medical services to the poor in different countries. In fact, he participated in 28 medical missions through his church. This included travel to third world countries where he provided medical services to people who were underserved or did not have professional medical care in their communities.

COSTS OF INVESTIGATION AND ENFORCEMENT

9. Complainant requested that respondent be ordered to pay reasonable costs of investigation and enforcement pursuant to Business and Professions Code section 125.3. However, complainant did not present evidence to support this request.

DISCUSSION

As noted above, respondent became sexually aroused at some point during the liposuction examination of the patient. Respondent should have stopped the examination immediately upon feeling aroused, but he continued to perform the examination and thereafter made inappropriate sexual remarks that upset the patient. Since the patient had indicated that she was interested in liposuction in her abdominal area, respondent's liposuction examination should have been limited to that area. By going beyond the abdominal area during the examination, continuing the examination after feeling sexually aroused, and making inappropriate statements such as "I feel stimulated," respondent crossed ethical boundaries and violated Business and Professions Code sections 726 and 729, subdivision (a). Further, respondent's conduct during the liposuction examination was unprofessional under Business and Professions Code section 2234, subdivision (a).

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2236, based on respondent's conviction set forth in Factual Finding 3.

2. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 726, based on Factual Findings 3 and 4, and the Discussion section of this decision.

3. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, subdivisions (a), based on Factual Findings 3 and 4, and the Discussion section of this decision.

4. Although respondent is guilty of inappropriate sexual conduct with patient L.C., the evidence did not establish that respondent is a sexual predator. This does not excuse respondent's conduct with the individual patient. But it is a factor to consider in determining the appropriate discipline in this case. Consideration is also given to respondent's prior record as physician, his service to his church and the community, and his participation in medical missions where he provided medical care to the underserved. Based on the entire record, revocation stayed with a significant suspension and strict probationary conditions is the appropriate discipline in this case.

5. Cause does not exist to order respondent to pay costs of investigation and enforcement under Business and Professions Code section 125.3, based on Factual Finding 10.

ORDER

Certificate No. A 50381, issued to respondent Phillip Chung Pil Paik, M.D., is revoked pursuant to Legal Conclusions 1 through 3. However, the revocation is stayed and respondent is placed on probation for seven (7) years upon the following terms and conditions:

1. Actual Suspension

As part of probation, respondent is suspended from the practice of medicine for 60 days beginning the sixteenth (16th) day after the effective date of this decision.

2. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Division or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. Ethics Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Division or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Division or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Division or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Division or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Division or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Division or its designee in writing.

5. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on a whatever periodic basis thereafter may be required by the Division or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed board certified psychiatrist, who shall consider any information provided by the Division or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Division or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Division or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

6. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Division or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Division or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Division or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may

deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee. The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed board certified psychiatrist.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

7. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Division or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

8. Monitoring - Practice

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to

any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Division or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice and billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Division or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine and whether respondent is practicing medicine safely.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

9. Prohibited Practice

During probation, respondent is prohibited from performing pubic hair transplants on female patients. After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, respondent shall orally notify the patient that respondent does not perform pubic hair transplants on female patients. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this Decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not perform pubic hair transplants on female patients. Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

10. Notification

Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

11. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

12. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

13. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

14. Probation Unit Compliance

Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

15. Interview with Division or its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

16. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

17. Failure to Practice Medicine – California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

18. Completion of Probation

Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

19. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

20. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

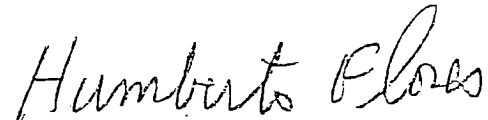
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21. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: July 26, 2006



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings